

Richard M. Cieri  
Ray C. Schrock  
Stephen E. Hessler  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

- and -

Jeffrey S. Powell  
Daniel T. Donovan  
Patrick M. Bryan  
KIRKLAND & ELLIS LLP  
655 15th Street, N.W., Ste. 1200  
Washington, D.C. 20005  
Telephone: (202) 879-5000  
Facsimile: (202) 879-5200

*Counsel for Ally Financial Inc.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	)	
In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
-----	)	

**ALLY FINANCIAL INC.'S RESPONSE TO THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS' AND FINANCIAL GUARANTY INSURANCE  
COMPANY'S STATUS CONFERENCE REPORTS**

1. Ally Financial Inc. ("AFI") and Ally Bank (together with AFI, "Ally") submit this limited response to the Official Committee of Unsecured Creditors' (the "Committee's") and Financial Guaranty Insurance Company's ("FGIC's") Status Conference Reports (the "Reports") filed on September 18, 2012 [Docket Nos. 1471 and 1477]. In the Reports, both FGIC and the

Committee misstate and mischaracterize Ally's discovery responses in connection with the Debtors' RMBS Settlement 9019 Motion.

2. The Committee's assertion in its status report that Ally has been delinquent in its discovery responses is not true and contrary to the discussions to date between counsel. In preparation for this hearing and after a "meet and confer," Ally counsel directly asked counsel for the Committee if there were "issues we [Ally and the Committee] should discuss in advance of the status conference tomorrow." (09/17/12 E-Mail from P. Kaufman to P. Bryan (attached as Exhibit A).) Just yesterday (on September 17, 2012), counsel for the Committee confirmed that he was not aware of any concerns with Ally's discovery responses and objections and he remained unaware of any such concerns. (*See* Exhibit A.) Accordingly, the Committee's statements that Ally's production is delinquent and its privilege log is somehow overdue were first raised by the Committee in its status report.

3. Moreover, contrary to the Committee's assertions in its status report, Ally has already produced responsive information, including e-mails and Board minutes, presentations and other Board materials, and has committed to produce additional responsive documents before the close of fact discovery on September 24. Ally has also, for the convenience of the Committee, re-produced a complete hard copy set of AFI and Ally Bank Board minutes (although already available on the Document Repository) and provided an index (by bates number) where other responsive documents can be found in Ally's document productions.

4. FGIC's claim that Ally has obstructed FGIC's discovery efforts is also unfounded. FGIC is the co-chair of the Committee and, as such, already has access to Confidential information produced by Ally to the Committee pursuant to the Court's Protective Order. Nevertheless, Ally has agreed to re-produce to FGIC the same Confidential materials that

Ally produces to the Committee. Furthermore, Ally has agreed to produce information designated Professional Eyes Only to FGIC upon the execution of an appropriate confidentiality agreement (at present, FGIC is not permitted to access to PEO material).<sup>1</sup> Importantly, although FGIC claims that Ally has been “obstinate,” Ally has in fact invited FGIC to meet and confer since September 4, 2012 when Ally served its written responses to FGIC’s document requests. FGIC declined to accept Ally’s invitation to meet and confer, although it agreed to meet and confer with the Debtors concerning FGIC’s nearly identical document requests to the Debtors.

Dated: September 18, 2012

/s/ Daniel T. Donovan

Richard M. Cieri  
Ray C. Schrock  
Stephen E. Hessler  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

- and -

Jeffrey S. Powell  
Daniel T. Donovan  
Patrick M. Bryan  
KIRKLAND & ELLIS LLP  
655 15th Street, N.W., Ste. 1200  
Washington, D.C. 20005  
Telephone: (202) 879-5000  
Facsimile: (202) 879-5200

*Counsel to Ally Financial Inc.*

---

<sup>1</sup> FGIC is the plaintiff in no less than ten (10) pending lawsuits against Ally. In these cases, FGIC asserts alter ego, fraudulent inducement, breach of contract, and aiding and abetting claims against AFI and Ally Bank relating to residential mortgage backed securities sold by the Debtors. Therefore, a confidentiality agreement is necessary to avoid undue prejudice to Ally that could arise from disclosure of Professional Eyes Only materials to individuals who are involved in the underlying FGIC litigation against Ally.

**EXHIBIT A**

**Bryan, Patrick M.**

---

**From:** Kaufman, Philip S. [PKaufman@KRAMERLEVIN.com]  
**Sent:** Monday, September 17, 2012 4:48 PM  
**To:** Bryan, Patrick M.; Levine, Adina C.  
**Cc:** Siegel, Craig; Glick, Michael A.; Bentley, Philip  
**Subject:** RE: RMBS discovery

Thanks for this email, Patrick. I did advise you last week was that I was not then aware of any additional concerns with your responses/objections to the Committee's August 29 subpoena, and I remain unaware of any such concerns. Should that situation change after we receive and review Ally's document production, however, I will certainly let you know promptly. In addition, although I do not see any need at this point for the Committee to receive a duplicate production of all documents placed in the Examiner's repository, I would request that, if any of those documents are responsive to the Committee's August 29 subpoena, you both inform us that the documents have been produced to the repository and identify each of the documents by Bates number so we can locate them without difficulty.

I look forward to meeting you on Wednesday as well.

Regards,

Phil

This communication (including any attachments) is intended solely for the recipient(s) named above and may contain information that is confidential, privileged or legally protected. Any unauthorized use or dissemination of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail message and delete all copies of the original communication. Thank you for your cooperation.

---

**From:** Bryan, Patrick M. [mailto:pbryan@kirkland.com]  
**Sent:** Monday, September 17, 2012 4:11 PM  
**To:** Kaufman, Philip S.; Levine, Adina C.  
**Cc:** Siegel, Craig; Glick, Michael A.  
**Subject:** RE: RMBS discovery

Phil -- I wanted to memorialize a couple of points from our meet and confer last week so we're all on the same page. First, as I said on our call, Ally does not intend to assert joint defense/common interest privilege over communications between Ally and the trustees or RMBS settling parties, including the Talcott Franklin group and Kathy Patrick group.

Second, I asked whether the Committee had any other concerns with our responses/objections to the Committee's August 29 subpoena and you stated that the Committee did not have any other issues. If there are other issues we should discuss in advance of the status conference, please contact me.

By late tomorrow, I should be able to give you an update on when our supplemental production in response to the Committee's Aug. 29 subpoena will go out. We have been producing to the Examiner's

document repository per the Court's order. If you would like Ally provide a duplicate production to the Committee, we can certainly do so.

Look forward to meeting you on Wednesday.

Thanks,

Patrick

Patrick M. Bryan | Partner | Kirkland & Ellis LLP  
655 Fifteenth Street, N.W. | Suite 1200 | Washington , D.C. 20005  
Direct: (202) 879-5285 | Cellular : (202) 834-9043 | [patrick.bryan@kirkland.com](mailto:patrick.bryan@kirkland.com)

---

**From:** Kaufman, Philip S. [\[mailto:PKaufman@KRAMERLEVIN.com\]](mailto:PKaufman@KRAMERLEVIN.com)  
**Sent:** Friday, September 14, 2012 4:08 PM  
**To:** Bryan, Patrick M.; Levine, Adina C.  
**Cc:** Siegel, Craig; Glick, Michael A.  
**Subject:** RE: RMBS discovery

Thank you, Patrick. We look forward to seeing your production.

This communication (including any attachments) is intended solely for the recipient(s) named above and may contain information that is confidential, privileged or legally protected. Any unauthorized use or dissemination of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail message and delete all copies of the original communication. Thank you for your cooperation.

---

**From:** Bryan, Patrick M. [\[mailto:pbryan@kirkland.com\]](mailto:pbryan@kirkland.com)  
**Sent:** Friday, September 14, 2012 3:39 PM  
**To:** Levine, Adina C.  
**Cc:** Kaufman, Philip S.; Siegel, Craig; Glick, Michael A.  
**Subject:** RE: RMBS discovery

Philip and Adina -- Following up on our telephone conversation of 9/12, I have asked that a full set of board minutes be sent to you for Monday delivery. In addition, later today, I should be able to get you an Excel spreadsheet containing a list of bates ranges for board materials that are already available on the document repository.

As I said in our call, we expect to produce email/ESI responsive to the Committee's August 29 subpoena by 9/24. As I get more information about the anticipated date of our document production, I will let you know.

Patrick

Patrick M. Bryan | Partner | Kirkland & Ellis LLP  
655 Fifteenth Street, N.W. | Suite 1200 | Washington , D.C. 20005  
Direct: (202) 879-5285 | Cellular : (202) 834-9043 | [patrick.bryan@kirkland.com](mailto:patrick.bryan@kirkland.com)

---

**From:** Levine, Adina C. [<mailto:ALevine@KRAMERLEVIN.com>]  
**Sent:** Tuesday, September 11, 2012 7:04 PM  
**To:** Bryan, Patrick M.  
**Cc:** Kaufman, Philip S.; Siegel, Craig  
**Subject:** Re: RMBS discovery

Sounds good. We will call you then.

---

**From:** Bryan, Patrick M. [<mailto:pbryan@kirkland.com>]  
**Sent:** Tuesday, September 11, 2012 06:44 PM  
**To:** Levine, Adina C.  
**Cc:** Kaufman, Philip S.; Siegel, Craig  
**Subject:** Re: RMBS discovery

3pm?

---

**From:** Levine, Adina C. [<mailto:ALevine@KRAMERLEVIN.com>]  
**Sent:** Tuesday, September 11, 2012 03:57 PM  
**To:** Bryan, Patrick M.  
**Cc:** Kaufman, Philip S. <[PKaufman@KRAMERLEVIN.com](mailto:PKaufman@KRAMERLEVIN.com)>; Siegel, Craig <[csiegel@KRAMERLEVIN.com](mailto:csiegel@KRAMERLEVIN.com)>  
**Subject:** RE: RMBS discovery

Patrick,  
Phil Kaufman and I would like to discuss your response to our subpoena dated August 29<sup>th</sup>. We are available any time after 2 p.m. tomorrow. Let us know what time works for you.

Adina C. Levine

Associate  
Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of Americas  
New York, New York 10036  
Tel: 212-715-9474  
Fax: 212-715-8000  
Email: [ALevine@KRAMERLEVIN.com](mailto:ALevine@KRAMERLEVIN.com)  
<http://www.kramerlevin.com>

This communication (including any attachments) is intended solely for the recipient(s) named above and may contain information that is confidential, privileged or legally protected. Any unauthorized use or dissemination of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail message and delete all copies of the original communication. Thank you for your cooperation.

---

**From:** Bryan, Patrick M. [<mailto:pbryan@kirkland.com>]  
**Sent:** Tuesday, September 11, 2012 12:59 PM  
**To:** Siegel, Craig  
**Subject:** RMBS discovery

Craig -- In footnote 2 of the Committee's statement filed yesterday, the Committee claimed that Ally had not been responsive to the Committee's RMBS discovery. (Ken Eckstein repeated these statements at today's hearing.) These statements came as a surprise to us since no one from the Committee had previously raised any issue with our discovery responses or responsiveness (although we had been working with Kramer Levin on other document issues such as the Committee's collateral review).

Moreover, Ally has been producing documents since June 29 and making regular supplemental productions since that time. We have already produced some documents related to RMBS issues have will be continuing to do so in supplemental productions going forward.

Therefore, I'd like to set up a call to discuss whatever issues the Committee has with Ally's RMBS discovery responses and what we are doing to respond to the Committee's requests. I'd like to do so well in advance of the court ordered 9/19 discovery conference and am available tomorrow at any time before 5pm. Please let me know what time/date works for you.

Thanks,

Patrick

Patrick M. Bryan | Partner | Kirkland & Ellis LLP  
655 Fifteenth Street, N.W. | Suite 1200 | Washington , D.C. 20005  
Direct: (202) 879-5285 | Cellular : (202) 834-9043 | [patrick.bryan@kirkland.com](mailto:patrick.bryan@kirkland.com)

\*\*\*\*\*

IRS Circular 230 Disclosure:

To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding tax-related penalties under the U.S. Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail or by e-mail to [postmaster@kirkland.com](mailto:postmaster@kirkland.com), and destroy this communication and all copies thereof, including all attachments.

\*\*\*\*\*

\*\*\*\*\*

IRS Circular 230 Disclosure:

To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding tax-related penalties under the U.S. Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail or by e-mail to [postmaster@kirkland.com](mailto:postmaster@kirkland.com), and destroy this communication and all copies thereof, including all attachments.

\*\*\*\*\*

This communication (including any attachments) is intended solely for the recipient(s) named above and may contain information that is confidential, privileged or legally protected. Any unauthorized use or dissemination of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail message and delete all copies of the original communication. Thank you for your cooperation.

\*\*\*\*\*

IRS Circular 230 Disclosure:

To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding tax-related penalties under the U.S. Internal Revenue Code or (2)



promoting, marketing or recommending to another party any tax-related matters addressed herein.

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail or by e-mail to [postmaster@kirkland.com](mailto:postmaster@kirkland.com), and destroy this communication and all copies thereof, including all attachments.

\*\*\*\*\*

\*\*\*\*\*

IRS Circular 230 Disclosure:

To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding tax-related penalties under the U.S. Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail or by e-mail to [postmaster@kirkland.com](mailto:postmaster@kirkland.com), and destroy this communication and all copies thereof, including all attachments.

\*\*\*\*\*